

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

Writ Petition No. 17243 OF 1997

M.P.Dhanaraj
Executive Engineer (O & M)
Coimbatore Electricity Distribution Circle (North)
TNEB Mettupalayam 641 301 ... Petitioner.

-Vs-

1. The Tamil Nadu Electricity Board
rep. By the Chairman
800 Anna Salai
Chennai-2

2. The Chief Engineer,
R & D and Hydro Generation
TNEB Chennai-2 ..Respondent

Writ Petitions preferred under Article 226 of The Constitution Of
India praying for a writ of certiorarified mandamus as stated therein.

For petitioner :: Mrs.A.Arulmozhi

For respondents :: Mr.V.Radhakrishnan

:O R D E R

The petitioner, an Executive Engineer in the Tamil Nadu Electricity Board initially prayed for the issue of writ of certiorarified mandamus calling for the records of the 1st respondent in his proceedings (permanent) B.P. (Ch) No.178 dated 25.7.1995 and quash the same as illegal, and direct the respondents to accord all attendant benefits withheld in view of the punishment awarded in the above impugned order and pass such further or other orders.

2. As an objection was raised by Mr.V. Radhakrishnan, learned counsel appearing for the respondent, the petitioner moved for amendment of the relief. The amendment was ordered by this court and the amended relief prayed for by the petitioner reads thus:-

"The petitioner, prays for the issue of writ of certiorarified mandamus calling for the records of the 1st respondent in his proceedings (permanent) B.P. (Ch) No.178 dated 25.7.1995 and that of the appellate order

namely, (Permanent) B.P. (F.B.) No.37/96-1, dated 31.5.1996 quash the same as illegal, and direct the respondents to accord all attendant benefits withheld in view of the punishment awarded in the above impugned order and pass such further or other orders."

3. As early as 24.11.1997, notice of motion was ordered by this court to the respondent and with the consent of counsel on either side, the writ petition is taken up for final disposal.

4. The writ petitioner during 1978 desired to purchase a ready built house and submitted an application for sanction. The petitioner has also applied for sanction of house building advance which was registered and assigned priority. The petitioner's request for purchase was permitted on 30.3.1979 by the second respondent. The Executive Engineer (Civil) who inspected the building reported that the construction of the building is different from that of the approved plan and hence the petitioner decided to submit a revised plan. At that stage, the petitioner was selected for foreign assignment and deputed to Bhutan. The petitioner therefore could not pursue the matter by submitting a revised plan. The petitioner's wife chose to purchase the same house by selling her own jewels and taking a loan. The petitioner filed a return with respect to the property as on 31.12.1981 setting out the said particulars as well as the property which his wife has purchased. During 1987, the petitioner applied for permission to alienate a plot and construct a house. The application was kept pending for a considerable period. As there was no response, the petitioner's wife received advance from the buyer and purchased a plot at Coimbatore. The petitioner divided the plot into two and sold two portions to a different persons. The application for permission which was under process was delayed and no final order has been passed. Suddenly, the petitioner was served with a charge memo on 3.9.1994 by the Board alleging that the petitioner has violated the conduct regulations regarding acquisition and disposal of immovable property Without proper permission. Four charges were framed against the petitioner. The petitioner submitted a detailed explanation on 27.9.1994 denying the charges and opted for oral enquiry. The disciplinary authority appointed the Superintending Engineer Udumalpet Electricity Distribution Circle to be the Enquiry Officer and enquiry was conducted by the said authority. The Enquiry findings were not disclosed to the petitioner, nor it has been communicated till the penalty as imposed. However, final order has been passed by the first respondent on 25 .7.1995 imposing punishment of stoppage of increment for one year with cumulative effect. Along with the final order, the enquiry report was communicated.

5. As seen from the Enquiry report, the enquiry Officer held that charges 1 and 2 were not proved and charges 3 and 4 were proved. The petitioner submitted an appeal on 26.5.1995 which was rejected. Again the petitioner submitted a memorial on 1.8.1996 which was also rejected. Being aggrieved by the said proceedings, the present writ petition has been filed.

6. According to Mrs.Arulmozhi, learned counsel appearing for the petitioner, the proceedings are vitiated by illegality, suffer with error apparent on the face of the record, violative of principles of natural

justice, violative of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations, in that what is required by Regulation 8(a) proviso has not been followed, besides violation of other provisions of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations.

7. On behalf of the respondents a counter has been filed by the Secretary to the TNEB. According to the respondent 4 charges were framed against the petitioner and he was called upon to state his explanation to the charges besides he was required to file the questionnaire duly filled. The petitioner submitted his explanation on 27.9.1994 and opted both for enquiry as well as a personal hearing. The Superintending Engineer, Udumalpet Electricity Distribution Circle was appointed as the Enquiry Officer, who conducted the oral enquiry on 13 .1.1995. The enquiry officer submitted his report holding charges 1 and 2 have not been proved, but charges 3 and 4 are substantiated. The first respondent by the Board's proceedings dated 25.7.1995 imposed the punishment of stoppage of increment for a period of one year with cumulative effect. The appeal preferred as against the said penalty has been dismissed by the Board on 31.5.1996. The memorial preferred under Regulation 24 was also rejected. It is contended that the petitioner has not challenged the appellate proceedings, but has challenged the original proceedings and therefore this writ petition is not maintainable.

8. According to the respondents, the enquiry officer after conducting the enquiry and after affording opportunity to the petitioner submitted his report finding that the charges 1 and 2 have not been substantiated while charges 3 and 4 are proved. After considering the report, the first respondent imposed punishment of stoppage of increment for one year with cumulative effect, which is a minor punishment under Regulation 5 and therefore there is no necessity to communicate the enquiry report, nor it is required to communicate a copy of the report and afford opportunity to the petitioner. It is contended that having regard to the minor punishment imposed on the petitioner, it is not necessary to issue any further notice or opportunity or communicate the report submitted by enquiry officer. It is contended that proceedings has been conducted strictly in accordance with the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations and no interference is called for in this writ petition.

9. It is also contended that the petitioner is guilty of conduct regulations and there are sufficient materials in this respect as has been set out in the enquiry officer's report. It is contended that no interference is called for with the impugned proceedings.

10. In this writ petition the following points arise for consideration:-

(A) Whether the impugned proceedings imposing the punishment of stoppage of increment for one year with cumulative effect is liable to be quashed as violative of principles of natural justice in that no opportunity has been afforded to the petitioner to put forth his objections with respect to the enquiry officer's report?

(B) Whether the impugned proceedings are liable to be quashed for

contravention of Regulation 5 and 8 of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations?

(C) Whether the writ petition is liable to be dismissed on the ground that the petitioner had not challenged the proceedings of the second respondent, the appellate authority?

(D) To what relief, if any?

11. Mr.V.Radhakrishnan, learned counsel appearing for the respondents raised the preliminary objection that the writ petition is not maintainable, in that the proceedings of the appellate authority has not been challenged and after the disposal of the appeal, the proceedings of the original authority cannot be challenged as the proceedings of the original authority merges with the proceedings of the appellate authority. Though such a contention is hyper-technical but the learned counsel for the respondents relied upon the pronouncement of the Apex Court in 2000 (6) SCC 359 in this respect. However, the counsel for the petitioner moved for amendment of the relief and the amendment has been ordered. After the amendment, it is clear that the writ petitioner has not only challenged the proceedings of the disciplinary authority, the first respondent, but also the appellate authority. Therefore this contention will no longer survive. Hence this point is answered against the respondents.

12. The other points could be considered together. The following facts are not in dispute:

(i) Charges were framed under Regulation 8(b) of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations;

(ii) the petitioner submitted his objections and requested for oral enquiry and personal hearing;

(iii) the disciplinary authority appointed an enquiry officer;

(iv) the enquiry officer conducted an enquiry and submitted his report finding that the petitioner is guilty of two charges while exonerating him in respect of the remaining two charges;

(v) the enquiry report has not been communicated to the petitioner prior to the imposition of punishment and it was communicated only along with the penalty proceedings;

(vi) no opportunity was afforded to put forward the objections with respect to the findings recorded by the enquiry officer;

and

(vii) the disciplinary authority agreed with the enquiry officer's report and imposed minor penalty without affording an opportunity of hearing.

13. In the light of the above admitted facts, the two points have to be answered. There is no dispute that the first respondent is the

disciplinary authority. Regulation 5 prescribes penalties that may be imposed on the employees of the Board for good and sufficient reasons. Penalty of censure, withholding of increments or promotion, recovery from pay and suspension are categorised as minor penalties while reduction to a lower rank, compulsory retirement, removal from service, dismissal from service are categorised as major penalties, which could be imposed on a Board employee. Regulation 8 prescribes the procedure for imposing penalties. For imposition of minor penalties the procedure is prescribed in Regulation 8(a) and the procedure being affording a reasonable opportunity of making representation and the same shall be taken into consideration before imposition of minor penalty. For imposition of major penalty, the procedure is prescribed in Regulation 8(b). Regulation 8(b) prescribes an elaborate procedure of framing of charges, affording opportunity calling upon the petitioner to state his explanation, appointment of enquiry officer, holding an enquiry, submission of enquiry report, affording opportunity to state objections and personal hearing and thereafter only a major penalty could be imposed.

14. In the present case the penalty imposed being "withholding of the increment with cumulative effect", strictly speaking such penalty will not fall under Regulation 5(ii). It may fall under Regulation 5 (iii) which is categorised as a major penalty. However, this controversy need not be decided in the present case. Proviso to Regulation 8(a) mandates that to withhold increments of pay with cumulative effect for any period, sub clause/regulation (b) of Regulation 8 shall be followed. Proviso to sub clause/regulation (a) of regulation 8 reads thus:-

"Provided further that, in every case where it is proposed, after considering the representation, if any, made by the employee to withhold increment(s) of pay and such withholding of increment(s) is likely to affect adversely the amount of pension payable to the employee or to withhold increment(s) of pay without cumulative effect for a period exceeding three years or to withhold increment(s) of pay with cumulative effect for any period, the procedure laid down in sub regulation (b) shall be followed before making any order imposing on the employee any such penalty."

15. It is clear from the above Regulation that to withhold increments with cumulative effect for any period, the procedure prescribed for imposing major penalty in Regulation 8(b) has to be followed. Admittedly though charges were framed the petitioner was required to state his explanation, enquiry was conducted, enquiry report was submitted, but without affording an opportunity to state objections and without affording a personal hearing, which is the substantial part of the sub clause/regulation (b) of Regulation 8, the penalty of stoppage of increment with cumulative effect has been imposed in the present case. Therefore it is clear that sub clause/regulation (b) of Regulation 8 has not been followed. Mr.V.Radhakrishnan, learned counsel for the respondents has to necessarily admit that sub clause/regulation (b) of Regulation 8 has not been followed before imposing punishment of stoppage of increment with cumulative effect.

16. Regulation 8(b)(iii) prescribes that before making an order imposing such penalty, the disciplinary authority has to furnish the

delinquent official, a copy of the report of the enquiry or personal hearing or both as the case may be and call upon the delinquent to submit his further representation if any and thereafter after consider the representation as well as evidence adduced during enquiry to impose punishment. In the present case admittedly the enquiry report has not been communicated to the writ petitioner before imposition of penalty, nor the petitioner has been afforded an opportunity to state his objection, nor the petitioner has been heard. Thus Regulation 8(b)(iii) has been violated in the imposition of impugned penalty.

17. The learned counsel for the petitioner apart from the above two contentions contended that there is violation of principles of natural justice. In this case, the very Regulation itself namely 8(a) and (b) provides for communication of the copy of the enquiry report and for affording an opportunity to state objection as to the findings as well as a hearing. Apart from that it is the settled law that enquiry report should be communicated, objection should be called for and thereafter impose such penalty as the disciplinary authority may decide to impose. Mrs.Arulmozhi, learned counsel contended that the procedure adopted in this case is violative of principles of natural justice and on this short ground also the impugned proceedings are liable to be quashed. Per contra, Mr.V.Radhakrishnan, learned counsel appearing for the respondents contended that the punishment imposed being minor, no opportunity need be given. This contention advanced by Mr.V.Radhakrishnan cannot be sustained in the light of the proviso to Regulation 8(a) as well as 8(b)(iii). The above provisions which are mandatory have been violated by the respondents and this is fatal to the impugned proceedings.

18. That apart, a Three Judges Bench of the Supreme Court in Punjab National Bank Vs. Kunhi Behari Misra, reported in 1998 (7) SCC 84 after considering the earlier pronouncement in B.Karunakar's case (1993 (4) SCC 727) and other catena of pronouncements held thus:-

"16.....The Court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the enquiry officer was an essential part of the first stage itself. This was expressed by the Court in the following words: (SCC p. 754, para 26)

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant

evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the enquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute an additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the

disciplinary authority.

18. :: :: :: :: :: :: ::

19.....The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

This pronouncement squarely applies to the facts of this case and there is no escape for the respondents.

19. In *Yoginath D. Bagde Vs. State of Maharashtra*, reported in 1999 (7) SCC 739, after referring to the *Punjab National*

Behari Misra case, the Apex Court held thus:-

"30. Recently, a three-Judge Bench of this Court in *Punjab National Bank v. Kunj Behari Misra*¹¹ relying upon the earlier decisions of this Court in *State of Assam v. Bimal Kumar Pandit*, *Institute of Chartered Accountants of India v. L.K. Ratna* as also the Constitution Bench decision in *Managing Director, ECIL v. B. Karunakar* and the decision in *Ram Kishan v. Union of India* has held that: (SCC p. 96, para 17)

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under: (SCC p. 96, para 18)

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that

authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

20. In the light of the above discussions and in the light of the above pronouncements of the Apex Court, this court holds that the impugned proceedings of both the respondents are quashed. The writ petition is allowed, but without costs.

21. It is brought to the notice of the court that the petitioner has already demitted the office on reaching the age of superannuation and he has been permitted to retire and therefore there could be no further proceedings at all against the petitioner in respect of the said four charges framed against him. Hence, it is needless to add that the petitioner is entitled to all the consequential benefits.

Index:yes

Internet:yes
gkv.

To

1. The Tamil Nadu Electricity Board
rep. By the Chairman
800 Anna Salai
Chennai-2

2. The Chief Engineer,
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